

# Court of Appeals, State of Michigan

## ORDER

Lindsey Nicole Pecic-Badgley v Harold J White

Docket No. 288875

LC No. 98-003187-DP

Karen M. Fort Hood  
Presiding Judge

Mark J. Cavanagh

Kirsten Frank Kelly  
Judges

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This Court having remanded this matter to the trial court for entry of an order consistent with its opinion; and the trial court having entered an order in compliance with the Court's directive on June 30, 2009: The Court orders that this appeal is CONCLUDED. No jurisdiction remains with this Court.

Fort Hood, J. (concurring in part and dissenting in part). I join in the closure of the case. However, I would sua sponte disqualify the trial judge and reassign the case to a new judge. See MCR 7.216(A)(7). At oral argument on the claim of appeal, a panel member from this Court made inquiry regarding bias of the trial court. After oral argument, this Court received inquiry from a staff member of the trial court regarding access to oral argument tapes to determine what was said. On remand, plaintiff filed a motion to disqualify the trial judge. However, review of the transcript reveals that the trial court did not address the merits of the motion, rule on the motion, and refer the motion to the chief judge if the motion was denied. See MCR 2.003(C). Rather, the trial court determined that an evidentiary hearing would be conducted because plaintiff's counsel "made serious allegations about the judges in the Court of Appeals and the statements they've made. And you've made serious allegations about me having communication with the defendant. And you're going to have to prove those things." The trial court also concluded that plaintiff's counsel had a "complicated set of proofs" and would need "a couple of hours" for the evidentiary hearing. The court rules addressing a motion for disqualification provide for the filing of a motion with affidavits, MCR 2.003(C)(2); there is no evidentiary hearing. More importantly, any inquiry by this panel, any perception of the transcript from the lower court proceedings,

and any response by the attorney is irrelevant to the proceedings on remand. A court speaks through its written orders, not its oral pronouncements. *Tiedman v Tiedman*, 400 Mich 571, 576; 255 NW2d 632 (1977); *Brausch v Brausch*, 283 Mich App 339, 353; 770 NW2d 77 (2009). The paramount concern in child custody disputes is to ensure finality and stability. *DeGrow v DeGrow*, 112 Mich App 260, 265; 315 NW2d 915 (1982); MCL 722.28. Who said what about whom, whether a trial judge or judge of this Court, is irrelevant to that goal.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

OCT 08 2009

Date

*Sandra Schultz Mengel*

Chief Clerk